

STEPTOE & JOHNSON LLP

ATTORNEYS AT LAW

**EX PARTE OR LATE FILED
ORIGINAL**

1330 Connecticut Avenue, NW
Washington, DC 20036-1795

Telephone 202.429.3000
Facsimile 202.429.3902
www.steptoel.com

Alfred M. Mamlet
202.429.6205
amamlet@steptoel.com

RECEIVED

SEP 11 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

September 11, 2000

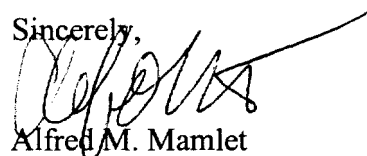
Ms. Magalie Roman Salas
Secretary, Federal Communications Commission
The Portals, 445 12th Street, S.W.
Washington D.C. 20554

**Re: Ex Parte – Availability of INTELSAT Space Segment Capacity to Users and Service
Providers Seeking to Access INTELSAT Directly
IB Docket No. 00-91**

Dear Ms. Salas:

On September 8, 2000, Kent Nakamura (Sprint Communications Company L.P.), James Hedlund (WorldCom, Inc.) and Alfred Mamlet (Steptoel & Johnson, LLP) discussed the above-captioned matter, including the matters in the attached presentation with (1) Bryan Tramont in Commissioner Furchtgott-Roth's office; (2) Clint Odom in Chairman Kennard's office. Two copies of the attached materials are being provided to the Commission with this letter.

Sincerely,



Alfred M. Mamlet

Attachments

cc: Mr. Bryan Tramont
Mr. Clint Odom
Mr. Kent Nakamura
Mr. James Hedlund
Mr. Lawrence W. Secrest, III (counsel for COMSAT)

No. of Copies rec'd 2
List A B C D E

Portability of INTELSAT Capacity

FCC

Sprint / WorldCom

September 2000

INTELSAT Capacity Is Scarce

“ Today, nearly 80% of INTELSAT transponders that can access the U.S. are in operational use serving customer demand. The remaining 20% are available for U.S. users, but less than half of them (*i.e.*, only 8% of the total) are in high demand from a U.S. customer requirements perspective, and some of the most desirable connectivities are completely sold out. Moreover, some of the capacity that is located in high-demand connectivities is fragmented over numerous transponders, and thus is not useful to users with higher bandwidth needs. ”

-- COMSAT Comments at 7-8

Direct Access Capacity Available to U.S. Customers Is Very Limited

- WorldCom has obtained direct access for only 12 percent of the circuits that it has requested.
- With failure of the WorldCom/Sprint merger, Sprint anticipates rapid expansion of its data business internationally, and capacity limitations will restrict Sprint's ability to use direct access in place of or in addition to COMSAT contracts.
- Other commenters have described similar capacity limitations.

COMSAT Has Privileged Access to INTELSAT Capacity

- COMSAT's privileges result from its former monopoly.
- COMSAT can extend its monopoly via INTELSAT procedures.
 - leases -- guaranteed reservations, rights of first refusal
 - standardized circuits -- long term contracts, "rolling" extensions
- Capacity limitations allow COMSAT to continue monopoly pricing, particularly on non-competitive routes.
- COMSAT has long known that its capacity monopoly can be used to block direct access:

[M]ost importantly, COMSAT has a capacity contract with Intelsat, which gives the company ownership of the vast majority of capacity connecting with the U.S. In effect, others can play ball under direct access, but COMSAT owns the equipment.

-- Salomon Smith Barney (October 5, 1998)

The ORBIT Act Requires “Appropriate Action”

- It is undisputed that INTELSAT capacity is scarce.
- It is undisputed that capacity limitations are impairing availability of direct access.
- There is substantial evidence of COMSAT's privileged access to INTELSAT capacity.
- These facts require the FCC to take “appropriate action” under § 765(b) of the ORBIT Act.

Remedy -- Network Management Fee

- Proposal
 - applies upon expiration of existing COMSAT customer contract for INTELSAT services
 - direct access customer can:
 - continue to purchase through COMSAT at IUC plus NMF (2% of IUC)
 - purchase for any service term consistent with underlying COMSAT-INTELSAT contract
 - exercise right of first refusal to purchase directly from INTELSAT upon expiration or renewal of COMSAT capacity contract
- Advantages
 - provides many of benefits of direct access
 - preserves COMSAT contracts, pursuant to § 765(c) of ORBIT Act

Remedy -- Frequency Changes

- Proposal -- treat transition from COMSAT to direct access customer as a frequency change that does not require foreign capacity match
- Advantages
 - simple to implement operationally -- INTELSAT was willing until COMSAT blocked it
 - solves many direct access capacity problems without involving COMSAT capacity contracts at all